U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-M-S-

DATE: SEPT. 20, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a high school math teacher, seeks classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). In addition, the Petitioner seeks a national interest waiver of the job offer requirement that is normally attached to this classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. §1153(b)(2)(B)(i). This discretionary waiver allows U.S. Citizenship and Immigration Services (USCIS) to provide an exemption from the requirement of a job offer, and thus a labor certification, when it serves the national interest to do so.

The Director, Texas Service Center, denied the petition, concluding that the Petitioner did not establish that her work will be national in scope or that she will benefit the national interest to a greater extent than an available U.S. worker with the same qualifications.

The matter is now before us on appeal. On appeal, the Petitioner contends that her employment in "three (3) major jurisdictions" is "national in scope making it her past record of achievement that justifies projections of future benefits to the national interest."

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate his or her qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

> (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of Job Offer –
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> > (i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.[1]

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise...." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Dep't of Transp., 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing ahistory of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

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[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

II. ANALYSIS

The Petitioner has established that she is a member of the professions holding an advanced degree and that her work as a teacher is in an area of substantial intrinsic merit.[2] It remains, then, to determine whether the proposed benefits of the Petitioner's work will be national in scope and whether she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

At the time of filing the Form I-140, Immigrant Petition for Alien Worker, the Petitioner was employed as a math teacher for the [redacted] Prior to that, she taught high school math in New York for 2 years and the Philippines for 28 years. In support of the petition, the Petitioner submitted various documents, including copies of her academic credentials, training certificates, and letters from colleagues. Upon review of the submitted information, the Director issued a request for evidence (RFE). While he acknowledged that the Petitioner "is a capable and skilled teacher," he found that the record did not establish that her "proposed activities will be national in scope" or that "the national interest would be adversely affected if a labor certification were required."

In response, the Petitioner provided additional information, including materials regarding the importance of mathematics and national education goals, such as articles, a transcript of Bill Gates' 2008 testimony before the Committee on Science and Technology, research papers, President George Bush's remarks on the Immigration Act of 1990, and a 2011 statement by U.S. Secretary of Education Arne Duncan. While these initiatives address the intrinsic merit of education, they do not exempt educators from satisfying the *NYSDOT* analytical framework and do not indicate that one teacher will have an impact at the national level. The Petitioner did not offer any direct support that the submitted materials reflect an intent to alter the adjudication of national interest waiver applications with regard to teachers.[3] As U.S. Citizenship and Immigration Services (USCIS) does not have discretion to ignore binding precedent under 8 C.F.R. § 103.3(c), the Petitioner's eligibility must be determined according to the framework set forth in *NYSDOT*.

The Director denied the petition finding that the Petitioner had not overcome the deficiencies articulated in the RFE and concluding that she had not met the second and third prongs of the *NYSDOT* analytical framework. On appeal, the Petitioner argues that because she taught math in

[2] We note that while the Director indicated that it did "not form the basis for this denial," he found that the Petitioner had not established "at least five years of progressive post-baccalaureate experience" and therefore, had not met the regulatory requirements of a member of the professions holding an advanced degree. Although the Petitioner did not address this subject on appeal, upon review of the record, we find that there is sufficient documentation to overcome the Director's finding on this issue.

[3] In contrast, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95 (Nov. 12, 1999), specifically amended the Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians. The Petitioner has not demonstrated that other legislation, including the No Child Left Behind Act of 2001 (NCLBA), Pub. L. 107-110, 115 Stat. 1425 (Jan. 8, 2002), contains a similar legislative change to the national interest waiver provision at section 203(b)(2)(B)(i) of the Act.

New York, Maryland, and the Philippines, her proposed employment is not only national in scope, but "global since she can serve any other country in the world." The record does not, however, reveal that the Petitioner's work as an individual classroom teacher, regardless of where she teaches, significantly contributes to national educational goals, or that her work as an individual will further those objectives on a nationally significant level. This finding is consistent with *NYSDOT*, which cited an elementary school teacher as an example of a meritorious occupation that would lack the requisite national scope to establish eligibility.

The Petitioner also states that her long career in two countries is "her past record of achievement which justifies projections of future benefit to the national interest." Under the third prong of the *NYSDOT* framework, a petitioner must demonstrate that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. A petitioner must have a past record that "justifies projections of future benefit to the national interest" by exhibiting "some degree of influence on the field as a whole." *Id.* at 219, n. 6. The Petitioner contends that the submitted "recommendation letters are living testaments to [her] accomplishment." While the letters indicate that she is "well-liked and a "conscientious and able teacher" with a lengthy career, they do not claim that she has had an impact on the field of teaching. The submitted materials do not set her apart from other competent and qualified teachers, nor do they establish that her work has resulted in significant benefits beyond her own classroom. Without evidence demonstrating that her work has affected the field as a whole, the length and location of the employment and employment in a beneficial occupation such as a teacher does not qualify the Petitioner for the national interest waiver.

III. CONCLUSION

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or individual of exceptional ability should be exempt from the requirement of a job offer based on national interest. For the reasons discussed above, we find the record insufficient to confirm that the scope of the Petitioner's proposed work or her past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the Petitioner. Considering the record, the Petitioner has not established by a preponderance of the evidence that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

We will dismiss the appeal for the above stated reasons. It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of C-M-S-*, ID# 18274 (AAO Sept. 20, 2016)